

BUSH GOTTLIEB, A Law Corporation

JULIE GUTMAN DICKINSON (SBN 148267)

jgutmandickinson@bushgottlieb.com

JASON WOJCIECHOWSKI (SBN 263911)

jasonw@bushgottlieb.com

801 North Brand Boulevard, Suite 950

Glendale, California 91203-1260

Telephone: (818) 973-3200

Facsimile: (818) 973-3201

LAW OFFICES OF RONALD A. MARRON

RONALD A. MARRON (SBN 175650)

ron@consumersadvocates.com

ALEXIS M. WOOD (SBN 270200)

alexis@consumersadvocates.com

KAS L. GALLUCCI (SBN 288709)

kas@consumersadvocates.com

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

HERZFELD, SUETHOLZ, GASTEL, LENISKI, and WALL PLLC

JOEY P. LENISKI JR. (TN Bar No. 22891)

joey@hsglawgroup.com

The Freedom Center

223 Rosa Parks Avenue, Suite 300

Nashville, Tennessee 37203

Telephone: (615) 800-6225

(pro hac vice application forthcoming)

Counsel for Plaintiffs and the Proposed Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LEVI CHIN and TERESA PRECIADO

on behalf of themselves, and all others
similarly situated,

Plaintiffs,

v.

EVERGREEN FREEDOM
FOUNDATION,

Defendant

CASE NO. 5:24-cv-1473

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs, Levi Chin and Teresa Preciado (“Plaintiffs”), individually and on
2 behalf of all others similarly situated, allege on personal knowledge, investigation of
3 counsel, and on information and belief as follows:

4 **NATURE OF ACTION**

5 1. This case involves Evergreen Freedom Foundation (“Evergreen”) who
6 contacted individuals through the use of unsolicited emails with misleading subject
7 lines in violation of the Cal. Bus. & Prof. Code § 17529, *et seq.* (hereinafter referred
8 to as the “California Anti-Spam Law”).

9 2. The California Anti-Spam Law aims to deter the “annoyance” of
10 unsolicited email-advertisements,” as well as the “cost on users, using up valuable
11 storage space in e-mail inboxes, as well as costly computer bandwidth, and on
12 networks and the computer servers that power them, and discourages people from
13 using e-mail.”

14 3. Spam emails “also cause[] many additional problems because it is easy
15 and inexpensive to create, but difficult and costly to eliminate.” This includes the
16 “‘cost shifting’ from deceptive spammers to Internet business and e-mail users,”
17 which “has been likened to sending junk mail with postage due or making
18 telemarketing calls to someone’s pay-per-minute cellular phone.”

19 4. Additionally, “spam is responsible for virus proliferation that can cause
20 tremendous damage both to individual computers and to business systems.”

21 5. Defendant has violated the California Anti-Spam Law by sending
22 misleading emails to Plaintiffs and Class Members without Plaintiffs’ and Class
23 Members’ prior express consent in absence of a preexisting relationship.

24 6. Plaintiffs bring this action for injunctive relief, statutory damages, and
25 attorneys fees and costs, all arising from the illegal activities of Defendant.

26 **JURISDICTION AND VENUE**

27 7. This Court has subject matter jurisdiction over this case based on
28 diversity of citizenship under 28 U.S.C. § 1332 because the amount in controversy
exceeds \$75,000 and the citizenship of the parties at issue are diverse.

6 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
7 because a substantial amount of the conduct and events giving rise to this case, the
8 transmission of unsolicited email advertisements directed to and received by
9 residents of California including those sent to Plaintiffs, occurred in this District,
0 Defendant Evergreen has an office located in this District in Orange County, and
Plaintiffs reside in this District.

10. Plaintiff Levi Chin, is, and at all times mentioned herein was, an individual citizen of the state of California and resident of Moreno Valley, Riverside County, California.

12. Defendant Evergreen is a corporation. At the time of the events described in this Complaint, Evergreen was registered in the State of Washington, but effective June 3, 2024, has registered as a domesticated corporation in the State of Texas. Evergreen's registered agent for service of process in Texas is listed as CT Corporation System, 1999 Bryan St., Ste., 900, Dallas, Texas 75201.

13. Plaintiffs are employees of San Bernadino County, California, and are members of the Teamsters Local 1932 union, which represents approximately 14,000 public employees in California.

1 marked as “Your Experience with Teamsters – Your Voice Matters.” The substance
2 of the email, however, reveals that the sender is not affiliated with Teamsters, but
3 instead notates several references to its silent political agenda to encourage union
4 members to “stop paying dues” and advising members that they “have the right to stay
5 in or leave your public sector union.” The email advertises or promotes
6 optouttoday.com’s services, which is stated explicitly in the email as “help to stop
7 paying dues” by filling out the forms on the website in order to opt-out of their public
8 sector union. The emails also serve as an advertisement of Defendant’s services in
9 assisting union members in leaving their respective union. These emails are attached
10 hereto as cumulative Exhibit A.

11 15. Evergreen operates as, directs, and controls the entity titled Opt Out
12 Today, and its employees, including Orlando Ibarra. On the website optouttoday.com,
13 it describes itself as a project of Evergreen, which has gross revenues exceeding
14 \$500,000.00.

15 16. Evergreen on its website, [https://www.freedomfoundation.com/about-](https://www.freedomfoundation.com/about-freedom-foundation/)
16 [freedom-foundation/](https://www.freedomfoundation.com/about-freedom-foundation/), holds itself out as “a battle tank that’s battering the entrenched
17 power of left-wing government union bosses who represent a permanent lobby for
18 bigger government, higher taxes, and radical social agendas.”

19 17. The optouttoday.com website states that information it receives from
20 email recipients who visit “is recorded and stored for the purpose of responding to or
21 processing your contact request or union membership cancellation form.”

22 18. The emails received by Plaintiffs were unsolicited.

23 19. The email itself is a template which, upon information and belief, was
24 used to send thousands of emails to Plaintiffs and their co-workers. The fact that this
25 email is a template is confirmed by the fact that the email greeting is not personalized,
26 and instead states “Dear [blank],”.

27 20. Upon information and belief, Defendant paid for, authorized, and
28 directed the unsolicited and misleading emails to Plaintiffs and members of the

1 proposed class for the purpose of pushing its political agenda in abolishing unions
2 nationwide.

3 21. Plaintiffs further allege on information and belief that in each instance
4 of transmission, Defendant had actual notice of participation, or a high degree of
5 involvement, in a plan to create and transmit the emails to Plaintiffs and the putative
6 Class Members.

7 22. Other individuals and/or entities whose names are not known to
8 Plaintiffs but will be revealed in discovery are likely also funding and directing the
9 illegal email campaign described above.

10 23. In receiving the unsolicited and misleading emails, Plaintiffs suffered
11 concrete harm in the form of lost time spent reading the emails and responding in an
12 attempt to discern the context given the headline's objectively misleading nature, and
13 an invasion of privacy. Plaintiffs also found the Defendant's emails harassing,
14 annoying, and deceptive.

15 24. Plaintiffs have neither a preexisting or current business relationship with
16 Defendant nor provided direct consent to receive the emails or advertisements from
17 Defendant.

18 **CLASS ACTION ALLEGATIONS**

19 25. Plaintiffs incorporate paragraphs 1-24 as if fully alleged herein.

20 26. Plaintiffs bring this action on behalf of themselves, and behalf of all
21 other persons similarly situated (hereinafter referred to as "the Class").

22 27. ***Class Definition:*** Plaintiffs propose the following Class definition,
23 subject to amendment as appropriate:

24 **All individuals in California who received one or more**
25 **email(s) from Defendant Evergreen Freedom**
26 **Foundation, by and through Opt Out Today, on or**
27 **around April 25, 2024, containing the subject line**
28 **"Your Experience with Teamsters – Your Voice**
Matters."

1 Plaintiffs represent, and are members of, the Class. Excluded from the Class are
2 Defendant and any entities in which a Defendant has a controlling interest, Defendant'
3 agents and employees, any Judge to whom this action is assigned and any member of
4 such Judge's staff and immediate family, Plaintiffs' counsel, and any claims for
5 personal injury, wrongful death and/or emotional distress.

6 28. This Class Action Complaint seeks injunctive relief and money
7 damages.

8 29. ***Numerosity under FRCP 23(a)(1):*** Plaintiffs do not know the exact
9 number of members in the Class, but on information and belief, the number of Class
10 members exceeds 40. The joinder of all Class members is impracticable due to the
11 size and relatively modest value of each individual claim. The disposition of claims
12 in a class action will provide substantial benefit to the parties and the judicial economy
13 of the Court in avoiding a multiplicity of identical suits. The Class can be identified
14 easily through records maintained by Defendant and/or any vendors who transmitted
15 the unsolicited email on their behalf.

16 30. ***Commonality under FRCP 23(a)(2):*** There are well defined, nearly
17 identical, questions of law and fact affecting all Class members. Those common
18 questions of law and fact include, but are not limited to, the following:

19 a. Whether the emails sent to Plaintiffs and the
20 Class contain a misrepresentation in the subject line;

21 b. Whether the emails sent to Plaintiffs and the
22 Class would be likely to mislead the recipients;

23 c. Whether the emails were made by or sent at
24 the direction of one or more of the Defendant;

25 d. Whether Defendant can meet their burden of
26 showing they obtained prior express consent (*i.e.*, consent
27 that is clearly and unmistakably stated) to send such emails
28 (if applicable);

e. Whether Defendant are liable for damages,

1 and the amount of such damages; and

2 f. Whether Defendant should be enjoined from
3 engaging in such conduct in the future.

4 31. **Typicality under FRCP 23(a)(3):** As persons who received the emails,
5 without their prior express consent within the meaning of the California Anti-Spam
6 Law, Plaintiffs assert claims that are typical of each Class member. Plaintiffs will
7 fairly and adequately represent and protect the interests of the Class, and have no
8 interests which are antagonistic to any member of the Class.

9 32. **Adequacy under FRCP 23(a)(4):** Plaintiffs are members of the putative
10 class, and shall exercise due care and diligence in pursuing these claims on behalf of
11 the putative class. Plaintiffs have also retained counsel experienced in handling class
12 action claims involving violations of federal and state consumer protection and
13 privacy statutes.

14 33. **Predominance and Superiority under FRCP 23(b)(3):** The common
15 questions of law and fact involving the Class claims predominate over questions
16 which may affect individual Class members. A class action is the superior method for
17 the fair and efficient adjudication of this controversy. Class-wide relief is essential to
18 compel Defendant to comply with the California Anti-Spam Law. The interest of
19 Class members in individually controlling the prosecution of separate claims against
20 Defendant is small because the statutory damages in an individual action for the
21 violation of the California Anti-Spam Law are small. Management of these claims is
22 likely to present significantly fewer difficulties than are presented in many class
23 claims because the emails at issue all used the same template, and the Class members
24 did not provide prior express consent required under the statute to authorize receipt of
25 such emails.

26 34. **Injunctive Relief under FRCP 23(b)(2):** Defendant has acted on
27 grounds applicable to the Class, thereby making final injunctive relief and
28 corresponding declaratory relief with respect to the Class as a whole appropriate.
Moreover, on information and belief, Plaintiffs alleges that the California Anti-Spam

1 Law violations complained of herein are substantially likely to continue in the future
2 if an injunction is not entered.

3 35. ***Class Notice:*** Plaintiffs anticipate that notice to the proposed Class will
4 be effectuated through recognized, Court-approved notice dissemination methods,
5 which may include: United States mail, electronic mail, Internet postings, and/or
6 published notice.

7 **CAUSE OF ACTION**

8 **FIRST COUNT: VIOLATION(S) OF THE CALIFORNIA ANTI-SPAM LAW**

9 36. Plaintiffs incorporate paragraphs 1-35 as if fully alleged herein.

10 37. The California legislature enacted the California Anti-Spam Law due to
11 the “increasing drain on corporate budgets and possibly a threat to the continued
12 usefulness of the most successful tool of the computer age.” Cal. Bus. & Prof. Code
13 § 17529(b).

14 38. The overarching purpose of the California Anti-Spam Law is to
15 prohibit spam and regulate emails. *Id.* at § 17529(m).

16 39. The California Anti-Spam Law regulates, among other things, the
17 transmission and content of electronic mail messages initiated for the purpose of
18 advertising and promoting, among other things, services. *Id.* at §§ 17529.1 and
19 17529.5.

20 40. The California Anti-Spam Law imposes liability on an entity where
21 unsolicited email advertisements which violate the California Anti-Spam law are sent
22 on its behalf. *Id.* at § 17529.8.

23 41. Plaintiffs are, and at all times mentioned herein were, “recipients” as
24 defined by Cal. Bus. & Prof. Code § 17529.1(m).

25 42. Further, at all times mentioned herein, Plaintiffs have neither 1) a
26 preexisting or current business relationship with Defendant nor 2) provided direct
27 consent to receive advertisements from Defendant within the meaning of Cal. Bus. &
28 Prof. Code § 17529.1(o). Thus, the emails at issue are within the meaning of

1 “Unsolicited Commercial E-mail Advertisement” as defined by the California Anti-
2 Spam Law. Cal. Bus. & Prof. Code § 17529.1(o).

3 43. Defendant is, and at all times mentioned herein were “advertisers” as
4 defined by California Anti-Spam Law. Cal. Bus. & Prof. Code § 17529.1(a).

5 44. The emails at issue were sent to the California based email addresses
6 of the Plaintiffs.

7 45. The emails at issue were “commercial e-mail advertisements” within
8 the meaning of § 17529.1(c), intending to advertise the services of Defendant in
9 providing assistance to union members in terminating their memberships by hosting
10 a website which: (1) collects contact information and other data about the member;
11 and (2) provides the member with opt-out instructions and customized opt-out forms
12 for specific public-sector unions, which the member can either print or have
13 Defendant mail to them.

14 46. The subject line of the emails at issue contained a subject line that was
15 both misrepresentative of the context of the emails’ substance and misleading about
16 a material fact regarding the contents or subject matter of the message under
17 California Anti-Spam Law. Cal. Bus. & Prof. Code § 17529.5(a)(3).

18 47. The emails specifically misrepresented a material fact regarding the
19 contents and/or subject matter of the email under § 17529.5(a)(3) in that the subject
20 line appeared on its face to be endorsed or solicited by the Teamsters, when in fact
21 the email actually is intended to advertise the Defendant’ website services in
22 providing instructions and forms for the union member to opt-out of their
23 membership with the Teamsters.

24 48. Defendant knew the emails would be likely to mislead the Plaintiffs
25 and recipients, acting reasonably under the circumstances, about a material fact
26 regarding the contents or subject matter of the Emails under § 17529.5(a)(3).

27 49. As a result of Defendant’ conduct, Plaintiffs and the Class have
28 suffered actual damages and liquidated damages under the California Anti-Spam
Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court grant Plaintiffs and all putative Class members the following relief against Defendant:

A. Injunctive relief prohibiting such violations of the California Anti-Spam Law by Defendant in the future;

B. Liquidated damages, as provided by statute, of up to \$1,000.00 for each Email sent to the putative class, up to the maximum recovery of \$1,000,000.00 per incident;

D. An award of reasonable attorneys' fees and costs to counsel for Plaintiffs and the Class;

E. An order certifying this action to be a proper class action, establishing an appropriate Class (and any Subclasses the Court deems appropriate), finding that Plaintiffs are proper representatives of the Class, and appointing the lawyers and law firms representing Plaintiffs as counsel for the Class;

F. A trial by jury on all counts so triable; and

G. Such other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

DATED: July 15, 2024

Respectfully submitted,

/s/Julie Gutman Dickinson

Julie Gutman Dickinson

BUSH GOTTLIEB, A Law Corporation

JULIE GUTMAN DICKINSON

jgutmandickinson@bushgottlieb.com

JASON WOJCIECHOWSKI (SBN 263911)

jasonw@bushgottlieb.com

801 North Brand Boulevard, Suite 950

Glendale, California 91203-1260

Telephone: (818) 973-3200

Facsimile: (818) 973-3201

s/ Ronald A. Marron

Ronald A. Marron

LAW OFFICES OF RONALD A. MARRON

RONALD A. MARRON

ron@consumersadvocates.com

ALEXIS M. WOOD

alexis@consumersadvocates.com

KAS L. GALLUCCI

kas@consumersadvocates.com

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

s/Joey P. Leniski, Jr.

Joey P. Leniski, Jr. (TN Bar No. 22891_

HERZFELD, SUETHOLZ, GASTEL,

LENISKI, and WALL PLLC

The Freedom Center

223 Rosa Parks Avenue, Suite 300

Nashville, Tennessee 37203

Telephone: (615) 800-6225

Email: joey@hsglawgroup.com

(pro hac vice application forthcoming)

The filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.